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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,277	01/10/2002	Eric M. DoBrava	1001.1482101	8439
26191	7590	03/09/2006	EXAMINER	
FISH & RICHARDSON P.C.			NGUYEN, VI X	
PO BOX 1022			ART UNIT	
MINNEAPOLIS, MN 55440-1022			PAPER NUMBER	

3731

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/044,277

Applicant(s)

DOBRAVA ET AL.

Examiner

Victor X. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) 19-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 13-18 and 23-25 is/are rejected.
- 7) ☒ Claim(s) 8-12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 3-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Acker et al (6,605,084).

Acker et al disclose, in figs. 18, 20, a catheter system that meets the limitations of claim 1, including: an elongate shaft (310), a radially extendible collection array (312) disposed about a portion of the elongate shaft and near the distal end of the elongate shaft, where the radially extendible collection array has one or more collection lumens (a bore within element 312 are considered as lumen) open to the blood vessel which is capable of receiving the core material at the periphery of the blood vessel, and remove the core material from the blood vessel, where maintain the core material out of the blood vessel. As to claims 3-7, where the collection array is radially extendible which includes a hydraulic mechanism which comprises a balloon (362). It is interpreted that the catheter is only a part of the recitation of intended use in the preamble of claim 1. Note: The introductory statement of intended use and all other functional statements have been carefully considered but are deemed not to impose any structural limitations on the claims distinguishable over the Acker et al reference which is capable of being used as claimed if

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one desires to do so. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Claims 1-7,13-18 and 23-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Peacock III, (6,234,995).

Peacock III discloses a medical device system that meets the limitations of claims 1-6.

The device includes an elongate shaft (41), a radially extendible collection array (70, see col. 18, lines 64-67, col. 19, lines 1-14) comprises a plurality of lumens (see col.18, lines 20-37) which open to the blood vessel and capable of removing the core material from the blood vessel, and maintain the core material out of the blood vessel disposed about a portion of the elongate shaft that having outer circumferential walls (44) spaced away from inner circumferential walls (43) by radial spacing members, where the collection array is radially extendible and collapsible (see col. 18, lines 60-67), where the means for radially extendible and collapsible includes a hydraulic mechanism that comprises a balloon (71).

As to claim 7, Peacock III discloses in fig.3b, where the means for radially extending and/or radially collapsing the collection array includes a mechanical mechanism. As to claims 13-18, Peacock III discloses the distal end of the collection array includes a plurality of collection ports (46'), and the proximal end of the collection array includes a plurality of retrieval ports (68), where the retrieval ports are fluidly connectible to a suction means (250), and where at least one collection lumen provides fluid communication between at least one collection port and at least one retrieval port. As to claims 23-25, the device further has one or

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more retrieval ports that corresponds to the one or more collection lumens (fig. 9), where at least one axially directed collection port is directed away from the proximal end of the elongate shaft (fig. 8c), and where at least one axially directed collection port is directed toward the proximal end of the elongate shaft (fig. 9). It is interpreted that the catheter is only a part of the recitation of intended use in the preamble of claim 1. Note: The introductory statement of intended use and all other functional statements have been carefully considered but are deemed not to impose any structural limitations on the claims distinguishable over the Peacock et al reference which is capable of being used as claimed if one desires to do so. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Allowable Subject Matter

2. Claims 8-12 which depend on claim 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

None of the prior art of record disclose or suggest where each collection lumen is defined at least in part by a first circumferential wall, a second circumferential wall, a first radial wall, and a second radial wall.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Response to Amendment

3. Applicant's arguments filed 12/22/2005 have been considered but they are not persuasive. In response to applicant's argument that Acker "the Acker structure has no collection array, can not receive core material from a blood vessel, and can not remove any core material from the blood vessel" (a functional limitation): It is noted that fig. 18 of Acker can be broadly defined element 312 an expandable or extendible collection array that is disposed about a portion of an elongate shaft (310). Thus, a reference needs not show the structure of the recitation in order to meet the claim language but rather the reference needs only be capable of being used with such structure. Accordingly, the above noted reference is still considered to read on the claimed limitations of the claims noted. Moreover, the same arguments applied to Acker can apply to Peacock III. Accordingly, the above noted reference is still considered to read on the claimed limitations of the claims noted.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Victor X Nguyen
Examiner
Art Unit 3731

VN VN
3/6/2006



JULIAN W. WOO
PRIMARY EXAMINER